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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,225	09/19/2003	Joseph J. Estwanik	18391.012	7016
21878	7590	05/03/2005	EXAMINER	
KENNEDY COVINGTON LOBDELL & HICKMAN, LLP 214 N. TRYON STREET HEARST TOWER, 47TH FLOOR CHARLOTTE, NC 28202				AMERSON, LORI BAKER
ART UNIT		PAPER NUMBER		
3764				

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/667,225	ESTWANIK, JOSEPH J.	
	Examiner	Art Unit	
	L Amerson	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 27 January 2005.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-15 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-3,5-9 and 11-15 is/are rejected.
 7) Claim(s) 4 and 10 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 19 September 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____

5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

Response to Arguments

1. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Furthermore, upon careful review of the claims, claims 12-14, previously indicated as containing allowable subject matter are hereby withdrawn and are newly rejected in view of the reference to Parker.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

a. Claims 1-3, 5-9, 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Parker. Parker discloses a rocker device (fig. 1) having a lower rocking surface (fig. 1; 13), arcuately shaped (fig. 4) on a flat surface and an upper platform surface (14) having a recess (4) defined by two platform surfaces (3, 5) fixedly attached between the lower rocking surface and the upper platform surface. Regarding the language, "for stretching a user's leg muscles," "for

rocking motion," "for receiving a user's knee in a bent condition of the user's leg", for stretching the user's quadriceps upon rocking motion" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claims 2 and 8, the recess is cushioned (fig. 4; 11). As to claim 3, the rocker device has at least one handle (7). Regarding the language, "for transporting the rocker device" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 5, the two platform surfaces are disposed at an angle to one another (fig. 4). Regarding the language, "for receiving a user's knee in bent condition" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 6, the upper platform surface is configured to rest on a generally flat surface (fig. 2-3). Regarding the language, "allowing a user alternatively to position the user's heel of the user's leg on the lower rocking surface for stretching the user's hamstring muscle or to position the user's foot of the user's leg on the lower rocking surface for stretching the user's calf muscle" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 7, see the paragraph for claim 1. Additionally, a first position (fig. 1) wherein the lower rocking surface rests on a generally flat surface and a second position (fig. 2-3) wherein the upper platform surface rests on a generally flat surface. Regarding the language, "allowing the user to position the user's knee in a bent condition of the user's leg in the recess of the upper

platform surface for stretching the user's quadriceps upon rocking motion," and "allowing a user to position alternatively the user's heel of the user's leg on the lower rocking surface for stretching the user's hamstring muscle or to position the user's foot of the user's leg on the lower rocking surface for stretching the user's calf muscle" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 9, see the paragraph for claim 3. As to claims 12-14, see the paragraphs above regarding the apparatus furthermore column 1, lines 22-25 regarding the method of use. Parker is capable of the steps of resting the lower surface on a flat surface and placing a user's limb in the recess of the platform and rocking back and forth and positioning the rocker in a first position (fig. 4) or a second position (fig. 3). A user is capable of stretching while using the device of Parker.

Conclusion

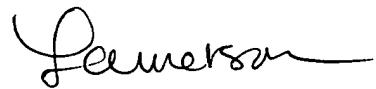
2. Claims 4 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. and Thur..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



L. Amerson